

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARNELL DUKES,

Plaintiff,

vs.

J. VILLANUEVA, A. NAVARRO

Defendants.

CASE NO. 09CV0580-LAB (JMA)

**ORDER GRANTING DEFENDANT
NAVARRO'S MOTION FOR
SUMMARY JUDGMENT**

17 On June 18, 2010, Defendant Navarro filed a motion for summary judgment. The
18 Court granted two substantial extensions of time, based on Plaintiff Dukes' somewhat vague
19 representations about conditions that prevented him from preparing his opposition. Most
20 recently in a motion filed November 2, Dukes sought to continue all pretrial dates an
21 additional 45 days. By an order issued November 4, the Court denied this request and
22 explained its reasons for doing so. The Court ordered Plaintiff to file his opposition
23 immediately, and cautioned him that if he did not do so, the motion could be summarily
24 granted.

25 Two weeks have passed since that order was issued and Dukes has not filed his
26 opposition or anything else. Under Civil Local Rule 7.1(f)(3)(c), failure to file an opposition
27 to a motion when required to do so can constitute consent to the granting of that motion.

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1 The Court construes Dukes' failure to oppose Navarro's motion for summary judgment as
 2 consent to the granting of the motion.

3 Furthermore, it is unclear what evidence Dukes could point to that could support
 4 finding Navarro liable. Dukes brings claims under 42 U.S.C. § 1983, based on a series of
 5 related incidents. He alleges Defendant Villanueva tried to require him and his cellmate to
 6 shower while handcuffed together, threw a bar of soap at him through a meal slot, and
 7 groped his buttock through the same meal slot. Dukes claims Navarro, Villanueva's fellow
 8 officer, is liable because he was present but failed to intervene to stop any of these incidents
 9 or report them.

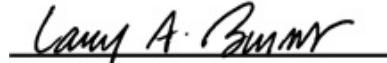
10 There is no vicarious liability under § 1983; “[I]liability . . . must be based on the
 11 personal involvement of the defendant.” *Taylor v. List*, 880 f.2d 1040, 1045 (9th Cir. 1989).
 12 Even assuming the allegations in the complaint to be true, Navarro was nothing more than
 13 a bystander. Furthermore, Navarro's alleged failure to intervene to stop Villanueva from
 14 trying to force Dukes to shower with his cellmate doesn't give rise to liability because it
 15 ended when Dukes refused. The complaint's allegations don't suggest Navarro's failure to
 16 intervene made any difference or caused any harm. The complaint likewise doesn't allege
 17 Navarro knew Villanueva would throw the bar of soap at or grope Dukes, much less that he
 18 participated in these incidents in any way. Finally, the complaint doesn't allege any harm
 19 caused by Navarro's failure to report these incidents.

20 In short, even if Dukes could prove all the allegations in his complaint, they don't link
 21 Navarro to any claims actionable in this suit.

22 Because Dukes has consented to Navarro's motion's being granted and because the
 23 complaint doesn't state a claim against Navarro, Navarro's motion for summary judgment
 24 is **GRANTED**. All claims against him are **DISMISSED WITH PREJUDICE**.

25 **IT IS SO ORDERED.**

26 DATED: November 18, 2010

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28 HONORABLE LARRY ALAN BURNS
 United States District Judge